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16

17 UNITED STATES DISTRICT COURT

18 DISTRICT OF NEVADA

19

20 YUGA LABS, INC.,

Case No.: 2:23-cv-00111-JCM-NJK

21 Plaintiff,

PLAINTIFF YUGA LABS, INC.'S
NOTICE OF MOTION AND MOTION
FOR AN AWARD OF ATTORNEYS'
FEES AND COSTS

22 v.

23 RYAN HICKMAN,

24 Defendant.

25

26

27

28

NOTICE OF MOTION AND MOTION

2 **PLEASE TAKE NOTICE** that pursuant to 15 U.S.C. 1117(a), Federal Rule of Civil
3 Procedure 54(d)(2), Local Rule 54-14, and this Court’s August 16, 2023, Order Granting Yuga
4 Labs’ Motion for Default Judgment (Dkt. No. 26), Plaintiff Yuga Labs, Inc. (“Yuga Labs”)
5 hereby moves this Court for an order awarding Yuga Labs its reasonable attorneys’ fees in the
6 amount of \$47,178.44 incurred in connection with its efforts in litigating this case against
7 Defendant Ryan Hickman (“Hickman”).

8 Yuga Labs bases the motion on this notice and motion, the accompanying memorandum
9 of points and authorities, the supporting declaration and exhibits that accompany the motion, all
10 other pleadings and papers on file in this action, any matter of which this Court may take judicial
11 notice, and any other evidence and materials as Yuga Labs may present to the Court before or
12 during the hearing.

14 | Dated: September 11, 2023 FENNEMORE CRAIG P.C.

By: /s/ John D. Tennert III
JOHN D. TENNERT III (NSB 11728)

and

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Attorneys for Plaintiff Yuga Labs, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

3 This Court found Ryan Hickman liable for his willful infringement of Yuga Labs' BAYC
4 Marks and determined that Yuga Labs "has sufficiently proven its entitlement to attorney fees
5 and costs under 17 U.S.C. § 1117(a)." Order on Motion for Default (Dkt. No. 26) ("Order") at 7;
6 *see also* Judgment and Order for Permanent Injunction (Dkt. No. 30) ("Judgment") ("For the
7 reasons set forth in the Court's Order on Motion for Default (Dkt. No. 26), it is hereby ordered
8 that Defendant Hickman pay to Plaintiff . . . Attorneys' fees"). Pursuant to this Order, the
9 Judgment, and for the reasons set forth below, Yuga Labs is entitled to recover \$47,178.44 in
10 attorneys' fees related to this lawsuit.

11 Mr. Hickman and his business partners sought to profit from selling counterfeit Yuga
12 Labs products. Yuga Labs is the creator behind one of the world's most well-known and
13 successful NFT collections, known as the Bored Ape Yacht Club ("BAYC"), and uses its BAYC
14 Marks¹ in connection with its products and services nationwide and internationally through
15 multiple platforms, NFT marketplaces, and social media.² In response to BAYC's popularity,
16 Mr. Hickman and his business partners launched a business venture to scam consumers into
17 purchasing their "RR/BAYC" NFTs, which use the very same BAYC Marks and underlying
18 images as BAYC NFTs. Order at 2. As part of this profit-making scheme, Mr. Hickman created
19 and commercialized websites and a smart contract to sell the intentionally misleading RR/BAYC
20 NFTs to the average consumer, oversaw and promoted their sales, knowing that they bore a
21 misleading label of "Bored Ape Yacht Club (BAYC)," and developed a marketplace—the "Ape
22 Market"—to sell the infringing NFTs alongside authentic BAYC NFTs. *Id.* Mr. Hickman's use
23 of the BAYC Marks has caused and continues to cause actual confusion in the marketplace,
24 which has resulted in damage and irreparable injury to Yuga Labs' hard-earned reputation.

²⁶ ²⁷ ¹ Yuga Labs' BORED APE YACHT CLUB, BAYC, BORED APE, APE, BA YC Logo, BA YC BORED APE YACHT CLUB Logo, and Ape Skull Logo trademarks.

²⁸ As another federal court found, these marks are valid and protectable. *Yuga Labs, Inc. v. Ripps*, No. CV 22-4355-JFW(JEMX), 2023 WL 3316748, at *4-*7 (C.D. Cal. Apr. 21, 2023).

1 To put an end to Mr. Hickman’s blatant and willful trademark infringement, Yuga Labs
 2 brought this lawsuit against him on January 20, 2023. *See* Dkt. No. 1 (Complaint for False
 3 Designation of Origin and Cybersquatting). Despite ample notice of this lawsuit (*see, e.g.*, Dkt.
 4 No. 18 (Declaration of Service)), Mr. Hickman failed to file a responsive pleading to Yuga Labs’
 5 Complaint within the time prescribed by Federal Rule of Civil Procedure 12(a) or any time
 6 thereafter; accordingly, Yuga Labs moved for an entry of default against Mr. Hickman (Dkt. No.
 7 19) and subsequently filed its motion for default judgment (Dkt. No. 23).

8 More than two full months after admittedly receiving notice of this lawsuit, as evinced by
 9 his public Tweets and statements to the media about the lawsuit, Mr. Hickman sent a letter to the
 10 Court on April 12, 2023, opposing Yuga Labs’ motion for default judgment (Dkt. No. 24), which
 11 the Court “liberally” construed to Mr. Hickman’s benefit. Dkt. No. 26 at 4. Yuga Labs filed a
 12 reply to Mr. Hickman’s opposition. After the motion for default judgment was fully briefed, on
 13 August 16, 2023, the Court granted Yuga Labs’ motion for default judgment, awarding Yuga
 14 Labs \$193,863.70 in monetary damages as well as injunctive relief. *See* Dkt. No. 26 at 7-8; *see also*
 15 Dkt. No. 30 at 2. The Court also found that Mr. Hickman acted willfully and intentionally
 16 in infringing the BAYC Marks, and therefore determined that Yuga Labs is entitled to its
 17 reasonable attorneys’ fees and costs. *Id.* at 7; *see also Derek Andrew, Inc. v. Poof Apparel*
 18 *Corp.*, 528 F.3d 696, 702 (9th Cir. 2008).

19 Yuga Labs’ attorneys’ fees sought in this motion are reasonable based on the skill and
 20 experience of the attorneys involved, as well as the demands of the case. The Court should not
 21 adjust these fees downward in light of the *Kerr* factors, which favor awarding Yuga Labs its full
 22 attorneys’ fees. Moreover, Yuga Labs is entitled to reimbursement of its minor and reasonable
 23 costs in this action, as set forth in the concurrently filed Bill of Costs.

24 **II. LEGAL STANDARD**

25 Under Federal Rule of Civil Procedure 54, a motion for attorneys’ fees must “specify the
 26 judgment and the statute, rule, or other grounds entitling the movant to the award” and “state the
 27 amount sought or provide a fair estimate of it.” Fed. R. Civ. P. 54(d)(2). Once a party
 28 establishes its entitlement to attorneys’ fees, the court must determine the reasonableness of such

1 an award. *In re USA Commercial Mortgage Co.*, No. 2:07-CV-892-RCJ-GWF, 2013 WL
 2 3944184, at *18 (D. Nev. July 30, 2013). This requires the Court to perform the “lodestar”
 3 calculation set forth in *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). See *Fischer v. SJB-P.D., Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000). First, the court multiplies “the number of hours
 4 reasonably expended on the litigation” by “a reasonable hourly rate” to reach the so-called
 5 “lodestar figure.” *Hensley*, 461 U.S. at 433. After making that computation, the court then
 6 assesses whether it is necessary to adjust the presumptively reasonable lodestar figure on the
 7 basis of the *Kerr* factors that are not already subsumed in the initial lodestar calculation:

9 (1) the time and labor required, (2) the novelty and difficulty of the
 10 questions involved, (3) the skill requisite to perform the legal service
 11 properly, (4) the preclusion of other employment by the attorney due to
 12 acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or
 13 contingent, (7) time limitations imposed by the client or the circumstances,
 14 (8) the amount involved and the results obtained, (9) the experience,
 15 reputation, and ability of the attorneys, (10) the “undesirability” of the case,
 16 (11) the nature and length of the professional relationship with the client,
 17 and (12) awards in similar cases.

18 See *Fischer*, 214 F.3d at 1119 (citation omitted); see also LR 54-14.³ Only in “rare and
 19 exceptional cases” should a court adjust the lodestar figure. *Pennsylvania v. Del. Valley*
 20 *Citizens' Council for Clean Air*, 478 U.S. 546, 565 (1986) (internal quotation marks omitted);
 21 *Fischer*, 214 F.3d at 1119 n.4 (“A strong presumption exists that the lodestar figure represents a
 22 reasonable fee, and therefore, it should only be enhanced or reduced in rare and exceptional
 23 cases.”) (internal quotation marks omitted).

24 **III. ITEMIZATION OF ATTORNEYS’ FEES**

25 District of Nevada Local Rule 54-14 requires that a motion for fees must include “[a]
 26 reasonable itemization and description of the work performed,” “[a]n itemization of all costs
 27 sought to be charged as part of the fee award and not otherwise taxable under LR 54-1 through
 28 54-13,” and “an affidavit from the attorney responsible for the billings in the case authenticating
 the information contained in the motion and confirming that the bill was reviewed and edited and

³ L.R. 54-14 also requires parties to provide “[a]ny other information the court may request.” Yuga Labs can supplement this motion with any additional information that the Court requests.

1 that the fees and costs charged are reasonable.” Yuga Labs has provided all of this information.
 2 See Ball Decl. Ex. 5 (itemization and description of work performed), ¶¶ 3, 19-30 (authentication
 3 and confirmation of billings). Yuga Labs is not seeking any costs as part of its fee award that are
 4 not otherwise taxable pursuant to Local Rule 54-1 through 54-13. *Id.* ¶ 31. The costs that Yuga
 5 Labs seeks to recover from Mr. Hickman are set forth in the concurrently filed Bill of Costs,
 6 pursuant to Local Rule 54-1. *Id.*

7 Yuga Labs seeks to recover a total of \$47,178.44 in reasonable and necessary attorneys’
 8 fees related to this litigation. See Ball Decl. Exs. 4, 5, ¶ 29. This amount reflects certain
 9 discounts between 15-17.5% from the prevailing market rate for Fenwick & West LLP’s
 10 (“Fenwick”) fees. *Id.* ¶ 24. In addition, Yuga Labs is voluntarily not seeking to recover fees for
 11 time entries in which multiple tasks were combined into a single entry or fees incurred by
 12 Fenwick billing professionals who spent less than five hours working on this case, which account
 13 for more than \$10,000 in fees billed to Yuga Labs for this matter. *Id.* ¶¶ 26-28. While Yuga
 14 Labs believes it could justify this amount and recover more, it is reducing its fee application to
 15 exclude these fees in order to avoid any doubt about the reasonableness of this fee request. *Id.*

16 **IV. ARGUMENT AND AUTHORITIES**

17 The total amount of attorneys’ fees incurred by Yuga Labs is reasonable in light of the
 18 work performed by their counsel of record and their counsel’s qualifications, and the
 19 circumstances do not warrant a reduction in the total fee award.

20 **A. Yuga Labs’ Fees Are Reasonable.**

21 “Federal courts employ the ‘lodestar’ method to determine a reasonable attorney’s fees
 22 award . . .” *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir. 2016). To perform this analysis, “a
 23 court calculates the lodestar figure by multiplying the number of hours reasonably expended on a
 24 case by a reasonable hourly rate.” *Id.* Here, the fees Yuga Labs seeks are reasonable for several
 25 reasons. First, the hourly rate charged by Fenwick reflects the prevailing market rate (with
 26 discounts) for highly skilled legal representation and the specialized qualifications of Fenwick’s
 27 attorneys. Second, the number of hours spent litigating this case are reasonable given the stakes
 28

1 of the dispute, the novelty of issues, and the high level of attention it deserved. The amounts
 2 requested are reasonable and consistent with fee awards in similar cases.

3 **1. The hourly rates of Yuga Labs' attorneys are reasonable.**

4 Courts consider the experience, skill, and reputation of the attorney requesting fees when
 5 determining the reasonableness of an hourly rate. *Webb v. Ada County*, 285 F.3d 829, 840 & n.6
 6 (9th Cir. 2002). To inform and assist the court in the exercise of its discretion, “[t]he party
 7 seeking an award of fees should submit evidence supporting the . . . rates claimed.” *Hensley*, 461
 8 U.S. at 433; *see also Jordan v. Multnomah Cnty.*, 815 F.2d 1258, 1263 (9th Cir. 1987). Rates
 9 evidenced through affidavits are normally deemed to be reasonable. *Blum*, 465 U.S. at 895-96
 10 n.11; *Beauchamp v. Anaheim Union High Sch. Dist.*, 816 F.3d 1216, 1224 (9th Cir. 2016)
 11 (quoting *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990)
 12 (“Affidavits of the plaintiffs’ attorney and other attorneys regarding prevailing fees in the
 13 community, and rate determinations in other cases, particularly those setting a rate for the
 14 plaintiffs’ attorney, are satisfactory evidence of the prevailing market rate.”)).

15 Attorneys for Fenwick are requesting court approval of rates between \$544.00 and
 16 \$1,135.00 per hour in this matter. *See* Ball Decl. ¶ 29. These rates reflect the attorneys’
 17 prevailing market rate for the November 2022 billing period, a 15% discount on the prevailing
 18 market rate during the December 2022 billing period, and a 17.5% discount on the prevailing
 19 market rate during the January 2023 – April 2023 billing periods. *See Id.* ¶¶ 7-9, 24.

20 A reasonable hourly rate should reflect the prevailing market rates of attorneys practicing
 21 in the forum community for similar services by lawyers of reasonably comparable skill,
 22 experience, and reputation. *Blum v. Stenson*, 465 U.S. 886, 895-96 n.11 (1984). While the
 23 relevant community generally is defined as the forum in which the court sits (Nevada), the Court
 24 may consider rates outside the forum “if local counsel was unavailable, either because they are
 25 unwilling or unable to perform because they lack the degree of experience, expertise, or
 26 specialization required to handle properly the case.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d
 27 973, 979 (9th Cir. 2008) (quoting *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997)).
 28 Moreover, “[i]n the Ninth Circuit, an award of attorney’s fees based solely on past fee awards is

1 considered unreasonable, because “holding the line” at a flat rate does not define the relevant
 2 ‘market rate.’’’ *Mancini v. Dan P. Plute, Inc.*, 358 F. App’x 886, 889 (9th Cir. 2009). While
 3 Fenwick’s rates are higher than some law firms in Nevada, these rates are standard rates for peer
 4 law firms in San Francisco and are justified due to the scarcity of Nevada counsel with the
 5 requisite experience, expertise, and specialization required to litigate this particular case. *See*
 6 *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992) (upholding attorneys’ fees at San
 7 Francisco rates, as opposed to Sacramento rates, due to the unavailability of Sacramento law
 8 firms with the requisite expertise and experience to handle an “extremely complex” case); *see*
 9 *also Sierra Club v. U.S. Env’t Prot. Agency*, 339 F. App’x 678, 680 (9th Cir. 2009).

10 First, the Fenwick team is uniquely qualified to handle this matter due to their familiarity
 11 with the facts and issues in this case. As explained in the Complaint and prior filings,
 12 Mr. Hickman was part of a business venture to sell scam NFTs using Yuga Labs’ Marks with
 13 three other individuals: Ryder Ripples, Jeremy Cahen, and Thomas Lehman. Complaint (Dkt. No.
 14 1); Motion for Default (Dkt. No. 23). The Fenwick team successfully litigated a lawsuit against
 15 Mr. Ripples and Mr. Cahen in the Central District of California through trial, winning a string of
 16 victories including a summary judgment order finding those defendants liable for trademark
 17 infringement and cybersquatting, and becoming intimately familiar with Mr. Hickman’s
 18 involvement in the business venture. Ball Decl. ¶ 15. For example, as part of that case, the same
 19 Fenwick attorneys for whom Yuga Labs is seeking to recover its fees here took Mr. Hickman’s
 20 deposition, cross-examined him at trial, and enforced a subpoena against him in the District of
 21 Nevada. *Id.* Likewise, those same Fenwick attorneys managed the litigation in the Northern
 22 District of New York against Thomas Lehman, another software developer and business partner
 23 for the business venture, successfully obtaining a consent judgment finding him liable for
 24 trademark infringement. *Id.* The facts of this lawsuit against Mr. Hickman are inextricably
 25 intertwined with the lawsuits against other members of the RRBAYC Team, relying on much of
 26 the same evidence and revolving around many of the same issues. *Id.* The unique and
 27 specialized knowledge this Fenwick team has gained has led to efficiencies litigating this case
 28 against Mr. Hickman and reduced the overall fees against Mr. Hickman. *Id.* ¶ 17. Fenwick’s

1 hourly rates charged for these three lawsuits were the same, reflecting the national scope of the
 2 infringing activity and similarities of the three cases. *Id.* ¶ 15.

3 *Second*, Fenwick is a top ranked firm for intellectual property litigation, and its attorneys
 4 are based in the San Francisco Bay Area. *Id.* ¶¶ 4, 6-9. The firm has also been ranked among
 5 the leading advisors in the nation in the Fintech Legal and Blockchain and Cryptocurrencies
 6 practice areas in the Chambers FinTech guide (2023) and by The Legal 500 (2023). *Id.* ¶ 4. The
 7 rates put forth by its attorneys are below market for peer firms in the region. *Id.* ¶¶ 6-9.
 8 Moreover, comparable rates have been recognized time and again as reasonable in this and other
 9 jurisdictions. *Joyce R. v. Kijakazi*, No. 2:21-CV-01296-VCF, 2023 WL 4532829, at *2 (D. Nev.
 10 July 12, 2023) (finding \$1400 hourly rate for attorneys reasonable); *Fleming v. Impax Labs., Inc.*,
 11 No. 16-cv-06557-HSG, 2022 WL 2789496, at *9 (N.D. Cal. July 15, 2022) (finding hourly
 12 rates of \$760-\$1,325 for partners and \$895-\$1,150 for counsel reasonable); *AECOM Energy & Constr., Inc. v. Topolewski*, No. CV17-5398-RS WL-AGRx, 2022 WL 1469501, at *4 (C.D. Cal.
 13 May 9, 2022) (finding hourly rates of \$876 for senior associate and \$1,116 for partner
 14 reasonable); *Joseph S. v. Kijakazi*, No. CV 20-09138-DFM, 2023 WL 2628243, at *3 (C.D. Cal.
 15 Jan. 23, 2023) (“Exercising its discretion, the Court finds reasonable the rate of \$1,600 per hour
 16 for attorney time.”).

18 *Third*, the Fenwick attorneys involved in this case have developed expertise in NFT
 19 trademark litigation and are not aware of any law firm in Nevada with comparable expertise.
 20 Fenwick attorneys also represented Yuga Labs in other matters venued in Nevada, with
 21 Fennemore Craig P.C. (“Fennemore”) as local counsel, and achieved positive outcomes for their
 22 client in those circumstances, too. See *Yuga Labs, Inc. v. Ripps et al.*, 2:23-cv-00010-APG-NJK
 23 (D. Nev. 2023); *Armijo v. Ozone Networks, Inc. et al.*, 3:22-cv-00112-MMD-CLB (D. Nev.
 24 2023). This area of law is incredibly specialized and frequently deals with cutting edge legal
 25 issues of first impression. Indeed, whether NFTs could be trademarked at all was disputed in
 26 Yuga Labs’ lawsuit against Mr. Ripps and Mr. Cahen, and as a result of Fenwick’s expertise and
 27 skilled advocacy, the Court found that they could. *Yuga Labs*, 2023 WL 3316748 at *4-*5.
 28 Fenwick’s individual attorneys are also uniquely qualified to argue the issues in this case.

1 Mr. Ball is not only a leading trademark lawyer, but also has experience representing leaders in
 2 the blockchain and cryptocurrency space, making him uniquely suited to argue this blockchain
 3 industry trademark case. Ball Decl. ¶ 6. And Ms. Culp is also a leading intellectual property
 4 litigation attorney, teaching a class at UC Law SF (formerly UC Hastings) on the application of
 5 IP law to emerging technology. *Id.* ¶ 7. Mr. Fares and Ms. Hauh, while less experienced than
 6 Mr. Ball and Ms. Culp, are nonetheless highly qualified attorneys who have acquired specialized
 7 knowledge in the area of intellectual property litigation.

8 *Fourth*, Yuga Labs used skilled local counsel where expertise in the subject matter was
 9 not at issue. For example, Fennemore researched issues related to local rules, filing, and service
 10 requirements. Ball Decl. ¶ 16. Their rates, ranging from \$360 to \$520 per hour for attorneys and
 11 \$250 per hour for a paralegal, are within the standard range for legal professionals of their skill
 12 and experience in Las Vegas, Nevada. *See* Ball Decl. ¶¶ 10-13; *see also, Union Pac. R.R. Co. v.*
 13 *Winecup Gamble, Inc.*, No. 317CV00477LRHCLB, 2023 WL 4052413, at *4 (D. Nev. June 16,
 14 2023) (finding hourly rates ranging from \$400 to \$650 for attorneys and \$215 to \$305 for
 15 paralegals reasonable for Nevada); *Flynn v. Love*, No. 319CV00239MMDCLB, 2023 WL
 16 3080494, at *3 (D. Nev. Apr. 25, 2023) (finding hourly rates between \$300 and \$650
 17 reasonable); *Baluma S.A. v. Chow*, No. 2:20-CV-1752-KJD-EJY, 2023 WL 2844215, at *2 (D.
 18 Nev. Mar. 20, 2023) (finding hourly rates of \$525 for partners and \$345 for associates reasonable
 19 in Las Vegas).

20 The Court should approve the reasonable rates of Yuga Labs' attorneys in light of the
 21 attorneys' specialized skill, experience, and reputation in IP litigation related to NFTs and this
 22 case in particular.

23 **2. The time spent by Yuga Labs' attorneys was reasonable.**

24 In addition to evidence supporting the rates claimed, “[t]he party seeking an award of
 25 fees should submit evidence supporting the hours worked.” *Hensley*, 461 U.S. at 433; *see also*
 26 *Jordan*, 815 F.2d at 1263. The district court is not required to do a line-by-line examination of
 27 the hours charged, “and indeed should not, become green-eyeshade accountants.” *Nalder for*
 28 *Nalder v. United Auto. Ins. Co.*, 2:09-CV-1348-RCJ-GWF, 2014 WL 12690184, at *7-*8 (D.

1 Nev. June 3, 2014) (*citing Fox v. Vice*, 131 S. Ct. 2205, 2216 (2011) (Kagan, J.)) (“The essential
 2 goal in shifting fees . . . is to do rough justice, not to achieve auditing perfection. So trial courts
 3 may take into account their overall sense of a suit, and may use estimates in calculating and
 4 allocating an attorney’s time.”). Here, Yuga Labs’ attorneys performed the following categories
 5 of work in successfully obtaining a default judgment and order for attorneys’ fees in this case:

- 6 • Drafting and filing the Complaint and accompanying documents;
- 7 • Ensuring proper service on Mr. Hickman;
- 8 • Preparing *pro hac vice* applications;
- 9 • Drafting and filing entry of default;
- 10 • Drafting and filing motion for default and accompanying declarations and
 exhibits;
- 11 • Drafting and filing reply to Mr. Hickman’s letter;
- 12 • Drafting and filing proposed judgment and order for permanent injunction against
 Mr. Hickman; and
- 13 • Drafting and filing this motion for fees and accompanying declarations and
 exhibits.

17 Ball Decl. Ex. 5.

18 In light of the work performed, and the quality of results, the foregoing numbers fit
 19 comfortably within a reasonable range for the number of hours that needed to be worked in a
 20 case of this complexity. To determine the reasonable hours worked in winning this case,
 21 attorneys from Fenwick started by considering the total hours worked by their respective teams,
 22 and from these total hours, took a conservative approach, striking or reducing time entries where
 23 the work could be viewed as duplicative or where the work took longer than might have
 24 reasonably been expected. *Id.* ¶¶ 19-21. Yuga Labs’ attorneys judiciously described each of
 25 their activities in detail, and in order to avoid any doubt about the veracity of its time entries,
 26 Yuga Labs is not seeking recovery for any entries where multiple tasks were combined into a
 27 single entry. *Id.* ¶¶ 19, 26. Yuga Labs is also not seeking fees for the entirety of the hours billed
 28 by the attorney with the highest billing rate, Eric Ball. *See id.* ¶ 26. Likewise, Fenwick did not

1 include hours billed by timekeepers who spent less than five hours working on this case. *Id.* In
 2 total, Fenwick reduced its hours by approximately 22% of those recorded by its professionals to
 3 remove any doubt about the reasonableness of this fee request. *Id.* ¶¶ 26, 29. And the number of
 4 hours Yuga Labs' attorneys expended is reasonable when viewed in light of the millions of
 5 dollars in damages Mr. Hickman and the rest of the RR/BAYC Team have caused to Yuga Labs'
 6 brand, warranting an injunction, and the \$193,863.70 monetary damages award the company
 7 received in the Court's Order on Default Judgment.

8 **B. The circumstances of the case do not warrant a reduction in the fee award.**

9 The Court may also consider the *Kerr* factors when using its discretion to adjust the
 10 lodestar amount up or down. As required by Local Rule 54-16(b), Yuga Labs provides a brief
 11 summary of how these twelve factors apply to this case and warrant the fee award.

12 ***The results obtained and the amount involved:*** Counsel's success is of particular import
 13 in the Court's calculation of attorneys' fees and costs. *See Morales v. City of San Rafael,*
 14 96 F.3d 359, 363-64 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). Here, Yuga Labs'
 15 counsel obtained a favorable ruling on its motion for default judgment, with the Court granting
 16 Yuga Labs' request for monetary damages, attorneys' fees and costs, and injunctive relief.
 17 *See* Dkt. No. 26. at 7-8. The amount of fees and costs requested is a fraction of the total recovery
 18 of \$193,863.70. But "results may not be measured solely in terms of damages" and "the district
 19 court should consider not only the monetary results but also the significant nonmonetary results
 20 [the plaintiff] achieved for himself and other members of society." *McCown v. City of Fontana,*
 21 565 F.3d 1097, 1105 (9th Cir. 2009) (citing *Morales*, 96 F.3d at 365). The injunction against
 22 Mr. Hickman is invaluable to Yuga Labs in that it allows it to protect the integrity and goodwill
 23 built up in the BAYC Marks and BAYC brand. Moreover, the injunction serves the public
 24 interest by preventing further confusion as a result of Mr. Hickman's use of BAYC Marks to
 25 market scam NFTs. "Such a nonmonetary victory may constitute 'excellent results' for the
 26 purpose of calculating attorney's fees." *Id.* This factor favors a full award of fees.

27 ***The time and labor required:*** The number of hours committed to this dispute was no
 28 more than what was required to achieve the favorable outcome of a default judgment, and the fee

1 request seeks an award of less than what was spent by Yuga Labs to achieve this result. The
 2 work involved was neither simple nor routine. For example, the lawsuit against Mr. Hickman
 3 presents novel issues of trademark law as applied to new technology – NFTs. Furthermore,
 4 drafting the motion for default involved a significant amount of research into case law and
 5 investigation of supporting facts to achieve the unambiguous success of an injunction and
 6 damages award. In addition, Mr. Hickman’s failure to appear in this case when he was
 7 indisputably on notice of it (as shown by his letter opposition filed with the Court (*see* Dkt.
 8 No. 24)) increased the level of effort required by Yuga Labs’ counsel to achieve the favorable
 9 result. Therefore, the number of hours worked by Yuga Labs’ counsel for which it is seeking a
 10 fee award is conservatively stated and reasonable. This factor favors a full award of fees.

11 ***The novelty and difficulty of the questions involved:*** This is a case involving trademark
 12 infringement, which is itself a complex, fact-intensive area of the law. Yet it also involves
 13 NFTs, a novel technology that further adds to the complexity and novelty of issues in this case.
 14 The authority on trademark cases involving NFTs is very limited, as few courts have had to
 15 grapple with such burgeoning areas of technology, and this case involved matters of first
 16 impression in this judicial district. This factor favors a full award of fees.

17 ***The skill requisite to perform the legal service properly:*** As explained above, this case
 18 was diligently and efficiently litigated by highly qualified attorneys whose specialized skill and
 19 experience was necessary to properly litigate these complex issues. *Supra* at IV.A.1. This factor
 20 favors a full award of fees.

21 ***The preclusion of other employment by the attorney due to acceptance of the case:***
 22 Although Yuga Labs’ counsel were not precluded from other employment by their acceptance of
 23 this case, their availability to work on additional cases was limited by the time commitment
 24 required to prosecute this case. This factor is neutral.

25 ***The customary fee:*** As shown above, Fennemore’s rates are well within the customary
 26 fee sought in this district. *Supra* at IV.A.1. And while Fenwick’s rates are higher than some
 27 attorneys in Nevada, they are customary in jurisdictions like San Francisco and necessary to

1 prosecute this case due to the attorneys' unique skills and experience, as well as the national
 2 scope of this litigation. *Id.* This factor favors a full award of fees.

3 ***Whether the fee is fixed or contingent:*** The fees in this matter are calculated on an
 4 hourly basis. The fact that Yuga Labs has paid for work on an hourly basis at the stated rates
 5 supports the presumptive reasonableness of the lodestar calculation. This factor favors a full
 6 award of fees.

7 ***The time limitations imposed by the client or the circumstances:*** Mr. Hickman first
 8 appeared in this case by opposing Yuga Labs' Motion for Default. Having considered
 9 Mr. Hickman's opposition, the Court nevertheless entered default judgment for Yuga Labs. This
 10 factor favors a full award of fees.

11 ***The experience, reputation, and ability of the attorney(s):*** Fenwick is recognized as a
 12 leading law firm that specializes in high stakes intellectual property litigation for innovative,
 13 cutting-edge technology companies. *See* Ball Decl. ¶ 4. Its attorneys—including those litigating
 14 this case—collectively have decades of experience handling high-profile intellectual property
 15 litigation and command fees that reflect their skill and market demand. *See id.* ¶¶ 6-9. Yuga
 16 Labs staffed this matter appropriately. Fenwick assigned one partner reviewing work product,
 17 one counsel, one senior associate, and one junior associate researching and drafting to reduce the
 18 attorneys' fees. *Id.* ¶ 17.

19 Likewise, Fennemore is recognized as a leading law firm in the state of Nevada and
 20 provided invaluable analysis and assistance as local counsel in this case. *Id.* ¶ 16. It also staffed
 21 the case leanly with only one partner, two associates, and one paralegal. *Id.* ¶ 18. This factor
 22 favors a full award of fees.

23 ***The undesirability of the case, if any:*** Yuga Labs is not aware of anything making this
 24 case undesirable. This factor is neutral.

25 ***The nature and length of the professional relationship with the client:*** Courts in
 26 trademark cases have recognized that counsel's familiarity with a client's business and litigation
 27 needs may be a factor in determining the reasonableness of attorneys' fees in that it may be
 28 "more expeditious as well as to their ultimate advantage to utilize the services of counsel familiar

1 with their corporation and their trademark needs rather than local attorneys.” *See Playboy*
 2 *Enter., Inc. v. P.K. Sorren Export Co., Inc.*, S.D. Fla. Case No. 81-1264-Civ-CA, 1983 WL
 3 178, *2 (S.D. Fla. Jan. 5, 1983).

4 Here, Fenwick has advised Yuga Labs on a variety of matters since the company was
 5 founded in 2021. In particular, Fenwick has represented Yuga Labs in multiple trademark
 6 disputes that are directly related to this action, including those brought against other members of
 7 the RR/BAYC Team in the Central District of California (*Yuga Labs, Inc. v. Rippes et al.*, Case
 8 No. 2:22-cv-04355-JFW-JEM (C.D. Cal. June 24, 2022)) and the Northern District of New York
 9 (*Yuga Labs, Inc. v. Lehman*, Case No. 1:23-cv-00085-MAD-TWD (N.D.N.Y Feb. 6, 2023)).
 10 Ball Decl. ¶ 15. Fenwick is also assisting Yuga Labs with the prosecution of its trademark
 11 portfolio and has been doing so for more than one year. *Id.* ¶ 14. Moreover, Yuga Labs’ Chief
 12 Legal Officer is a former Fenwick attorney who has a prior working relationship with a number
 13 of the lawyers working on this matter. *Id.* Fenwick’s deep knowledge of the facts and law of
 14 this case, as well as its unique understanding of Yuga Labs’ business needs, therefore made
 15 Fenwick the practical and effective choice for representation. This factor favors a full award of
 16 fees.

17 **Awards in similar cases:** The amount requested for Fennemore is reasonable and
 18 consistent with fee awards in similar cases in Nevada. *See supra* at IV.A.1. The amount
 19 requested for Fenwick is reasonable and consistent with fee awards for counsel in other
 20 jurisdictions and counsel in Nevada where local counsel was unwilling or unable to perform
 21 because they lack the degree of experience, expertise, or specialization required to properly
 22 handle the case. *See id.* This factor favors a full award of fees.

23 **V. CONCLUSION**

24 Yuga Labs’ attorneys’ fees are reasonable based on the skill and experience of counsel at
 25 Fenwick and Fennemore and due to the demands and novel issues in this case. Accordingly,
 26 Yuga Labs should be awarded \$47,178.44 in fees as well as costs in the amount set forth in the
 27 concurrently filed Bill of Costs.

1 Dated: September 11, 2023

FENNEMORE CRAIG P.C.

3 By: /s/ John D. Tennert III

4 JOHN D. TENNERT III (NSB 11728)

5 and

6 FENWICK & WEST LLP
7 ERIC BALL (CSB 241327)
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Attorneys for Plaintiff Yuga Labs, Inc.

FENWICK & WEST LLP
ATTORNEYS AT LAW

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2023, the foregoing **PLAINTIFF YUGA LABS, INC.**'s
NOTICE OF MOTION AND MOTION FOR AN AWARD OF ATTORNEYS' FEES AND COSTS was
electronically served upon the parties via the Court's e-CM/ECF system, addressed as follows:

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